

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ERICA A. MADRID,

Plaintiff,

vs.

Civ. No. 17-977 KG/KRS

BRITT SNYDER, ET AL.,

Defendants.

ORDER REGARDING MOTION TO DISMISS

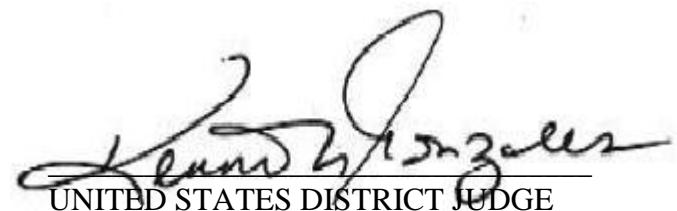
This matter comes before the Court upon Defendants' Motion to Dismiss, or in the Alternative, for a More Definite Statement (Motion), filed October 2, 2017. (Doc. 6). Plaintiff filed an Opposition Response (Response) on January 10, 2018. (Doc. 21). Defendants filed a Reply on January 23, 2018. (Doc. 23). The Court held a hearing on the Motion on April 5, 2018. William C Nedbalek appeared for the Plaintiff, and Mark L. Drebing appeared on behalf of Defendants.

In accordance with the ruling at the April 5, 2018 hearing, the Court concludes Plaintiff's Complaint for Wrongful Termination and Appeal From Decision of Termination (Complaint) (Doc. 2) fails to state a cognizable claim pursuant to Fed. R. Civ. P. 12(b)(6). The Court will dismiss the Complaint, which was filed *pro se*, but grant leave to amend. *See Reynoldson v. Shillinger*, 907 F.2d 124, 126 (10th Cir. 1990) (holding *pro se* litigants should have opportunity to "remedy defects potentially attributable to their ignorance of federal law"). The amended complaint will be limited to the theories Plaintiff attempted to raise in her original complaint, as set forth below. *See Minter v. Prime Equipment Co.*, 451 F.3d 1196, 1206 (10th Cir. 2006) (Under Fed. R. Civ. P. 15, courts may limit amendments that "make the complaint a moving

target") (quotations omitted); *Pallottino v. City of Rio Rancho*, 31 F.3d 1023, 1027 (10th Cir. 1994) (noting “[l]iberality in amendment is important,” but “[a] busy district court need not allow itself to be imposed upon by the presentation of theories *seriatim*”); *Aicher v. Pollard*, 2018 WL 1311517, * 6 (D.N.M. March 12, 2018) (Plaintiffs are not entitled to amend by adding “claims involving parties and circumstances different from the original pleading”) (citing cases).

IT IS ORDERED:

1. Plaintiff's Complaint for Wrongful Termination and Appeal From Decision of Termination (Doc. 2) is dismissed without prejudice.
2. Plaintiff may file an amended complaint no later than **May 7, 2018**.
3. The scope of the amended complaint and Plaintiff's wrongful termination claims will be limited to the following five theories: (a) a direct appeal to the district court; (b) a claim under Title VII of the Civil Rights Act, 42 U.S.C. §2000e et seq. or the New Mexico Human Rights Act, NMSA 1978, §§28-1-1 to 28-1-7; (c) a federal constitutional claim under 42 U.S.C. §1983; (d) a claim for breach of contract and/or the duty of good faith and fair dealing; and (e) a tort claim pursuant to the New Mexico Tort Claims Act, NMSA 1978, §§41-4-1 through 41-4-27.
4. The Court makes no determination at this time about the viability of those claims.



UNITED STATES DISTRICT JUDGE